

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

UNITED STATES OF AMERICA

VS.

CRIMINAL ACTION NO. 3:03CR98TSL  
CIVIL ACTION NO. 3:08CV709TSL

CARL A. SMITH

ORDER

This cause is before the court on the motion of defendant Carl A. Smith for relief pursuant to 28 U.S.C. § 2255. Having considered the defendant's motions, together with the record, the court now concludes that Smith's motion is due to be dismissed as untimely.

On June 1, 2004, Smith pled guilty to a charge of being a felon in possession of a firearm. On August 10, 2004, the court sentenced Smith to thirty months imprisonment with three years of supervised release. A judgment of conviction was entered by the court on August 12, 2004. Defendant did not appeal the judgment.

On November 14, 2008, via the mailbox rule, defendant filed his motion to vacate. By his motion, Smith appears to contend that the court failed to comply with the terms of his memorandum of understanding by enhancing his sentence and by ordering that his federal sentence would be run consecutively to a state

sentence which he was serving at the time of conviction in this court.<sup>1</sup>

Under § 2255, a one-year limitation period runs from the "date on which the judgment of conviction became final." Here, Smith's conviction became final on August 26, 2004. United States v. Plascencia, 537 F.3d 385 (5th Cir. 2008) (judgment becomes final when the applicable period for seeking review of a final conviction has expired, such that where no direct appeal was filed, the one-year statute of limitations period starts to run ten days after entry of the judgment); See Fed. R. App. P. 4(b)(1)(A); 26(a). Because Smith's motion was due to be filed by August 2005, and was not filed, via the mailbox rule, until November 2008, it is clearly untimely and subject to dismissal.

Based on the foregoing, it is ordered that defendant's motion for relief pursuant to § 2255 is denied. It is further ordered that defendant's motion for a transcript is denied.

SO ORDERED this the 18<sup>th</sup> day of September, 2009.

/s/Tom S. Lee  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> By his June 4, 2009 motion for production of transcripts, defendant has apprised the court that he is now in the custody of the United States Bureau of Prisons.